

ENVIROTECH FAÇADE SOLUTIONS PTY LTD – TERMS & CONDITIONS OF SALE

Payment terms

1. The terms of payment are strictly thirty (30) days (or such other period as nominated by the supplier herein) from the end of month of date of invoice and payment is due and payable on that date. Envirotech Façade Solutions Pty Ltd ABN 16 138 073 631 and its related bodies corporate (as that term is defined in the *Corporations Act 2001 (Supplier)*) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier shall be entitled to charge an administration fee of 10% of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.
3. A \$10.00 surcharge will be applied to each order, other than a backorder, which has a net value less than \$75.00. This surcharge will be strictly enforced.

Jurisdiction

4. The Applicant acknowledges and agrees that this agreement shall be governed by the laws of the state identified on page 1 herein, and the laws of the Commonwealth of Australia which are in force in that state.
5. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
6. The parties to this agreement submit to the non-exclusive jurisdiction of the courts in that state and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

7. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
8. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
9. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.

Purpose of credit

10. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.
11. The credit facilities provided by the Supplier are not transferable by the Applicant without the prior written consent of the Supplier. The Supplier may assign this agreement to another party without prior notice to the Applicant. The Supplier will give the Applicant notice when the assignment has been effected.

Formation of contract

12. Quotations made by the Supplier shall not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer shall complete a contract.
13. Placement of an order, either verbally or in writing, shall imply acceptance of the Supplier's offer and of these terms and conditions.

Orders

14. Any order which cannot be executed from warehouse stock will automatically be back-ordered and processed when stock becomes available, unless the Applicant specifically marks the order "DO NOT BACK ORDER". Deliveries at any time are subject to availability of stock and the Supplier will not be liable for any charges due to unavailability of product.

Delivery

15. Delivery will be made at the agreed charge within the metropolitan area of capital cities. In the cases of other destinations, goods will be delivered F.O.R. or to road transport depots. Orders which will be delivered free of charge will be insured by the Supplier until the point of receipt by the customer. For other orders, all risks associated with the goods shall pass to the customer immediately the goods are despatched.

Retention of title

16. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods shall not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
17. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and shall not mix the goods with other similar goods.
18. The Applicant shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant shall sell as agent and Bailee for the Supplier and the proceeds of sale of the goods shall be held by the Applicant on trust for the Supplier absolutely.

19. The Applicant's indebtedness to the Supplier, whether in full or in part, shall not be discharged by the operation of clause 18 hereof unless and until the funds held on trust are remitted to the Supplier.
20. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
21. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 20. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
22. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
23. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

Claims

24. No goods may be returned without the express permission of the Supplier. Credit will only be allowed at the discretion of the Supplier and it is the responsibility of the Applicant to pay freight costs involved in the return of goods unless otherwise authorised. Goods returned must be clearly identified as to sender, contents and nature of claim, and must be delivered to the Supplier's main store in each State or nearest railway station. Claims for price adjustment or for incorrect supply of goods must be made in writing within 30 days of receipt of goods, and must quote original invoice number.

Returned Goods

25. No goods will be accepted without prior approval from the Supplier. An authority number for the returned goods must accompany all returns. All credits will be issued on the basis of inspection and quoted on all credit requests. A minimum 20% handling charge applies.

Guarantee

26. All goods of faulty manufacture (excluding unavoidable imperfections) will be credited or replaced if the Supplier is advised within a reasonable time after delivery and the faulty product is made available for inspection and return. To the extent permitted by the Trade Practices Act, the Supplier's liability is limited to:
 - (a) the cost of replacing the goods;
 - (b) the cost of obtaining the equivalent goods; or
 - (c) the cost of having the goods repaired.
27. Details of the guarantees applicable to the various Supplier's finishes and products are set out in the price lists current at the date of the sale of the product(s) in question.

Electroplated and Coated Finishes

28. Every effort is made to use the most durable coatings to the metal surface of our products, however over a period of time deterioration may take place due to climate, frequent usage, perspiration, acids, exposure to weather, or other factors. Such deterioration is not a defect but a normal process which is unavoidable, and as such products cannot be unconditionally warranted, nor automatically replaced.

Product Development

The Supplier's policy is one of continuous product improvement, therefore changes to specifications may be made without incurring liability.

Cancellation of terms of credit

29. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
30. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Indemnity

31. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

32. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
33. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

34. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

Trustee capacity

35. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
- the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
 - the Applicant has the right to be indemnified out of trust assets;
 - the Applicant has the power under the trust deed to sign this agreement; and
 - the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
36. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

37. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
38. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

39. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

40. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.

Costs

41. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
42. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.

Taxes and duty

43. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
44. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
 - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

45. The interest rate on any outstanding debts is a fixed rate of 15% per annum.

Set-off

46. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
47. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Miscellaneous

48. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
49. In relation to the supply of goods, the Supplier's liability is limited to:
- replacing the goods or supplying similar goods;
 - repairing the goods;
 - providing the cost for replacing the goods or for acquiring equivalent goods; and
 - providing the cost for having the goods repaired.
50. In relation to the supply of services, the Supplier's liability is limited to:
- supplying the service again; or
 - providing for the cost of having the services supplied again.
51. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.

Severance

52. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
53. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

54. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
55. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Consent to register

56. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.

Entire agreement

57. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

Privacy Act

58. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.